

## 28.1321

### Refusal To Submit To Test

Any person who operates a motor vehicle within the state gives consent to a test or tests of [his] [her] blood, breath, or urine for the purposes of determining the alcoholic content of [his] [her] blood if arrested for driving while intoxicated.

A refusal to submit to chemical test under the Implied Consent Law occurs when the conduct of the arrested motorist is such that a reasonable person in the officer's position would be justified in believing that such motorist was capable of refusal and exhibited an unwillingness to submit to the test.

If you find that the defendant refused to submit to a test, you may consider such evidence together with all the other evidence in determining whether the State has proven the defendant guilty beyond a reasonable doubt.

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**SOURCE:** A.R.S. § 28-1321 (statutory language as of September 1, 2001); *Campbell v. Superior Court*, 106 Ariz. 542, 479 P.2d 685 (1971); *McNutt v. Superior Court of Arizona*, 133 Ariz. 7, 648 P.2d 122 (1982); *State v. Holland*, 147 Ariz. 453, 711 P.2d 592 (1985); *Kunzler v. Pima County Superior Court*, 154 Ariz. 568, 744 P.2d 669 (1987); *Kunzler v. Miller*, 154 Ariz. 570, 744 P.2d 671 (1987); and *Hively v. Superior Court*, 154 Ariz. 572, 744 P.2d 673 (1987).

**COMMENT:** The statement in the 1989 RAJI that a motorist was not entitled to the assistance of counsel in deciding whether to submit to a test has been deleted because it was an incorrect statement of law. No mention of the right to consult with counsel is included because introduction of evidence that the defendant requested to speak to counsel would be an impermissible comment on the defendant's exercise of constitutional rights. See, *State v. Juarez*, 161 Ariz. 76, 80, 81, 775 P.2d 1140, 1144, 1145 (1989) ("[I]n a criminal DUI case, the accused has the right to consult with an attorney, if doing so does not disrupt the investigation" and "Informing the driver that he may not call his attorney before taking the test misstates the law and violates the driver's right to consult with counsel under the sixth amendment of the United States Constitution and article 2, section 24 of the Arizona Constitution.").

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